



EXECUTIVE SUMMARY

UNITED STATES MARSHALS SERVICE ADMINISTRATION OF THE WITNESS SECURITY PROGRAM

U.S. Department of Justice
Office of the Inspector General
Audit Division

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EXECUTIVE SUMMARY*

This Office of the Inspector General (OIG) audit examines the United States Marshals Service's (USMS) administration of the Witness Security Program (WITSEC Program). The USMS is one of three Department of Justice components that have prominent roles in the WITSEC Program. The Criminal Division's Office of Enforcement Operations (OEO) authorizes the admission into the program of witnesses whose lives are in danger as a result of their testimony against drug traffickers, terrorists, organized crime members, and other major criminals. The Federal Bureau of Prisons (BOP) maintains custody of incarcerated witnesses. The USMS provides for the security, health, and safety of non-incarcerated program participants. Since inception of the WITSEC Program in 1970, the USMS has protected, relocated, and given new identities to more than 7,500 witnesses and more than 9,600 family members or associates.¹ The USMS devoted \$59.7 million and 173 staff positions to the WITSEC Program in fiscal year (FY) 2003.

Given the extensive and crucial role of the USMS in the WITSEC Program, we examined matters relating to the safety and security of witnesses, the assimilation of relocated witnesses, the USMS financial practices regarding WITSEC, the management information system used by the WITSEC Program, and the USMS management oversight of the WITSEC Program.

The objectives of our audit were to evaluate the: 1) USMS plans and strategies to achieve the WITSEC Program's stated security objectives; 2) controls for witness safety; and 3) internal controls for financial activities, including payments to protected witnesses and their families. In addition, we identified certain issues from our 1993 audit report on the USMS WITSEC Program that required follow-up.²

* The full 139 page report is not being publicly released because it contains law enforcement sensitive information relating to the Witness Security Program.

¹ The Comprehensive Crime Control Act of 1984 authorized "the relocation and other protection" of witnesses, their immediate family, and other close associates of the witness who may also be in danger because of the witness's testimony.

² *United States Marshals Service's Responsibilities Under the Witness Security Program*, 94-7, November 1993. Two recommendations from this report are still open, one relating to management controls over financial transactions and another relating to weaknesses in the management information system for the WITSEC Program.

Audit Results

Safety and Security of Witnesses

Our audit disclosed one breach of security attributable to USMS error that appeared to be an isolated incident and did not result in harm to a program participant.³ Specifically, two unrelated program participants were relocated to the same city where they encountered and recognized each other at a convenience store. Although no harm came to either individual as a result of the incident, the USMS had to relocate one of them elsewhere. Our review of the case file determined that the USMS could have prevented this security breach by more thoroughly reviewing the backgrounds of the two individuals in question to ensure they were not relocated to the same city. In addition to this incident, we received other allegations of security breaches that the complainants blamed on the USMS. However, we found the condition of the relevant case files too poor for us either to confirm or refute the allegations.

Our audit identified at least one opportunity to enhance security, and several issues that, if not addressed, could adversely affect witness security. The opportunity for enhancement of security involves the use of communications equipment as an alternative to in-person meetings with prosecutors or case agents outside a participant's relocation area. The necessary equipment is in place in some locations and the USMS has plans to utilize it at additional locations. However, our audit found that to date such equipment has not been used extensively. If the physical presence of a witness is not required in the danger area, the use of this equipment would be an effective way to protect the witnesses and avert the travel and security costs associated with transporting them back to their danger area or to a neutral site.

The issues that the USMS needs to address because of their potential adverse effect on witness security are varied. The following discussion provides a brief synopsis of them.

WITSEC Program Staff Levels: We are concerned that the staffing of the WITSEC Program is not commensurate with the workload. The number of operational and administrative positions authorized for the WITSEC Program has declined steadily, while the population of protected witnesses has increased. Between FY 1995 and FY 2003, WITSEC

³ We did identify other instances of security breaches; however, the incidents resulted from inappropriate actions on the part of program participants and not errors by the USMS.

operational positions declined from 175 to 135, and administrative positions declined from 49 to 38, but the witness population increased from 15,229 to 17,108. If the staffing level does not keep pace with the workload, the quality of services provided to program participants could decline unacceptably.

Duties of WITSEC Inspectors: In addition to the declining WITSEC staff levels, we noted that USMS WITSEC personnel work a considerable amount of time on non-WITSEC protective details. Since 2001, there has been a significant increase in the work hours of WITSEC personnel devoted to assignments where they guard government officials not associated with the WITSEC Program. According to USMS data, WITSEC personnel charged 25,608 hours in FY 2001 and 49,577 hours in FY 2003 to non-WITSEC protective assignments. While these details are an indication of the high level of competence of WITSEC inspectors in the field of personal protection, they are also a drain on the resources of the WITSEC Program.

Secrecy Agreements: USMS employees, employees of other federal agencies, and contractors who work in the WITSEC Program are required to execute secrecy agreements when they enter on duty and, again, when they cease employment in the program. In both instances, a designated USMS official is supposed to brief/debrief the employee or contractor and co-sign the secrecy agreement. We found that a significant number of the agreements had not been co-signed. For example, at the outset of our audit, we determined that 68 percent of the secrecy agreements signed by full-time USMS WITSEC employees had not been duly co-signed. In the absence of the required co-signatures, the USMS has no documented assurance that WITSEC employees and contractors were duly briefed and debriefed. The failure to obtain proper documentation of secrecy briefings and debriefings could limit the ability of the USMS to pursue any recourse if an individual improperly discloses sensitive WITSEC information.

Preliminary Interviews with Prospective Witnesses: The USMS conducts preliminary interviews of prospective witnesses. During the preliminary interview, the USMS explains the WITSEC Program to the prospective witnesses and collects necessary information from them. Based on the results, the USMS formulates a recommendation, positive or negative, regarding the admission of the candidate to the WITSEC Program and forwards the recommendation to the Criminal Division's OEO.

According to USMS policy, preliminary interviews are generally supposed to be completed within a specified number of days after receipt by the USMS of the request for an interview. However, we found that the USMS frequently takes significantly longer to complete such interviews. Our

analysis of USMS data disclosed that in FY 2003 the average elapsed time was nearly twice the prescribed time. The request for a preliminary interview is based on the recommendation of an investigative agency that has determined the interviewee's life might be in jeopardy because of prospective testimony. For this reason, we believe the USMS should ensure that preliminary interviews occur within prescribed time frames.

Our audit did not find evidence of actual harm resulting from the failure to complete preliminary interviews in a timely manner, but this does not mean that there are no adverse consequences when preliminary interviews are not completed in a timely manner. Until the preliminary interview has been completed, the potential witness remains the responsibility of the sponsoring investigative agency. The sponsoring agency also incurs the associated financial and personnel burdens of protecting these individuals.

Similarly, the failure to complete timely preliminary interviews of prisoner witnesses presents problems. The BOP cannot maintain custody of inmates past their release dates and the USMS cannot take released prisoners under protection until the OEO grants its approval. In exigent circumstances, the OEO will grant emergency approval. Otherwise, the sponsoring investigative agency will be responsible for protection of the released prisoner witness.

Consequently, the preliminary interview is a critical step in the admission of individuals to WITSEC protection and the USMS should ensure that it is completed expeditiously.

Morale of WITSEC Program Staff: We interviewed WITSEC inspectors at various sites around the country about a number of job-related matters. Based on the results of those interviews, we have serious concerns about the morale of WITSEC staff. In our judgment, the USMS needs to address the issues raised by WITSEC staff to prevent those issues from adversely affecting the WITSEC Program. Most prominent among them is the journeyman grade level of WITSEC inspectors. These inspectors are at the GS-12 level, while specialists in other USMS programs are at the GS-13 level. To advance to higher grades, inspectors seek promotions outside the WITSEC Program, which results in WITSEC frequently losing experienced personnel and the continuity that is necessary in a program like WITSEC. According to USMS data, 11 inspectors (nearly 10 percent of total inspectors) left the WITSEC Program for promotions to GS-13 positions elsewhere in the USMS between September 2002 and May 2003. WITSEC management has recognized the problem and proposed upgrading WITSEC

inspectors, but the necessary funding (over \$900,000 annually by our estimate) has not been allocated to the program.

Assimilation of Relocated Witnesses

One of the objectives of the WITSEC Program is to help program participants become self-sufficient in their relocation area. Among other things, this requires assisting them to secure employment. The USMS relies mainly on the efforts of local WITSEC inspectors who are not necessarily skilled in employment counseling and who perform a wide range of other WITSEC duties. We believe the need exists for an employment specialist at USMS headquarters to assist the local inspectors who work directly with the witnesses and their dependents. Without effective assistance in obtaining employment, there is a risk that program participants will remain on subsistence funding longer than necessary.

Foreign-born witnesses require immigration documents from the Immigration and Customs Enforcement (ICE) agency of the Department of Homeland Security before they may engage in certain activities. However, the USMS has experienced significant problems in obtaining documentation for WITSEC program participants. We believe the USMS should pursue a formal Memorandum of Understanding (MOU) with the ICE establishing a procedure that ensures the timely provision of immigration-related documents to foreign-born protected witnesses and their dependents. The MOU should also address other matters of concern, such as assurances that ICE employees who process WITSEC-related documents will execute a Secrecy Agreement. The absence of an MOU increases the risk that breakdowns will occur in providing necessary services to foreign-born program participants.

Financial Practices

We found numerous weaknesses with financial practices in the WITSEC Program. For example, our audit disclosed that WITSEC inspectors frequently disburse funds prior to obtaining authorization; we found disbursements of as much as \$10,000 that were made prior to authorization. We also found that the documentation of transactions is often incomplete or erroneous, and WITSEC inspectors do not routinely reconcile cash advances to supporting documentation within the prescribed time. In addition, WITSEC management officials have not been performing the periodic cash counts required by USMS policy. We previously reported (in our November 1993 report) on weaknesses in the USMS financial management of the WITSEC Program and our current audit found that problems continue to

exist. If these weaknesses are not corrected the potential exists for funds to be lost or misappropriated.

Management Information System

Our 1993 audit report also identified inadequacies in the management information system used by the USMS WITSEC Program. Although we found that some improvements have been made since 1993, our current audit determined that the management information system continues to be inadequate at least in its case management component, the design of which dates from the early 1990's. We made numerous requests for data that the USMS either could not provide or else could provide only from spreadsheets maintained manually by individual employees. For example, the WITSEC management information system could not provide reliable data about the number of: candidates who received preliminary interviews in a given time period; witnesses approved for admission to the program who were picked up within the prescribed timeframe; foreign-born program participants and their ethnic background and primary language; program participants holding S visas;⁴ USMS actions initiated and completed to obtain documentation for program participants; witness productions in the danger area and neutral-site visits with case agents and prosecutors; grievances filed by program participants; and criminal history checks each month over a given timeframe. The WITSEC management information system was also unable to provide us reliable data about the deaths of program participants. Considering these shortcomings of the system, WITSEC management does not have the necessary information available to manage the program properly; without current, accurate, and complete information, managers cannot readily detect problems and institute corrective action in a timely fashion.

Management Oversight

The USMS needs to improve management oversight of the WITSEC Program. Current USMS policy calls for quarterly inspections of field offices. However, we found that USMS personnel did not adhere to this policy. As part of our audit, we performed work at 15 WITSEC offices and found that the supervisory inspection of those offices had been sporadic. None of them received regular quarterly inspections. We also found that USMS officials are not performing unannounced counts of the cash advances held by WITSEC

⁴ The S Visa is a non-immigrant visa authorized by the Violent Crime Control and Law Enforcement Act of 1994. An S Visa may be granted to aliens who are witnesses or informants in certain criminal or terrorist cases.

inspectors. Unless corrected, these lapses of oversight could permit operational and financial irregularities to occur.

Survey of Program Participants

In conjunction with our audit, the USMS judgmentally selected 300 WITSEC participants and sent them a questionnaire asking their views on the WITSEC Program.⁵ Although this was not a scientific sample and we cannot project the results to the universe of WITSEC participants, it is important to note that the respondents generally expressed a high degree of satisfaction. In response to the principal questions, 153 of 168 respondents stated that adequate security measures had been taken to protect them and their families; 112 respondents replied "no" to the question, "Have you or your family experienced problems under this Program which could have been avoided;" 154 respondents agreed that WITSEC is a worthwhile program; and 133 respondents replied affirmatively to the question, "If, when you entered the program, you had your present knowledge about it, would you still have entered?"

Recommendations

Based on our findings, we formulated 21 recommendations to improve the USMS WITSEC Program. For example, we recommend that the USMS:

- Install and utilize communications equipment at additional sites to reduce the travel and in-person meetings required of program participants;
- Address the morale issues among WITSEC employees, especially the grade level of WITSEC inspectors;
- Ensure that the secrecy agreements for USMS employees, employees of other agencies, and contractors who work in WITSEC are duly witnessed by USMS representatives;
- Enhance the employment assistance provided to WITSEC Program participants;
- Strengthen the WITSEC Program's financial management through such action as ensuring that inspectors obtain necessary approval in

⁵ The USMS developed the questionnaire, selected the survey participants, and tabulated the results. The OIG auditors suggested some modifications to the questionnaire in the interest of greater specificity and the USMS concurred. The results of the survey may be found in Appendix II.

advance of the disbursement of funds and promptly reconcile cash advances to supporting documentation; and

- Improve the management oversight of the WITSEC Program through ensuring the performance of quarterly inspections of field offices and requiring that periodic cash counts are performed by field staff.

The details of our work are discussed in the Findings and Recommendations section of the report. Our audit objectives, scope, and methodology are contained in Appendix I.